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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,095	04/08/2004	Cammi A. Bruton	5097-0001	8984
28777	7590	11/16/2005	EXAMINER	
MICHAEL L. DIAZ, P.C.			MAI, TRI M	
555 REPUBLIC DRIVE, SUITE 200			ART UNIT	
PIANO, TX 75074			PAPER NUMBER	

3727

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/821,095

Applicant(s)

BRUTON, CAMMI A.

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the two apertures (cl. 1), the adjusting of the position of the infant within the harness (claim 4), the attaching of the infant to the front seat of a shopping cart must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. Claims 11-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed

invention. It is unclear how the portion 50 is attached to the shopping cart. See drawing objection.

3. Claims 11-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 is inconsistent with claim 1; claim 1 previous set forth the position of the infant with respect to the carrier. However, the means for attaching the infant requires the infant carrier to be by itself and the means for attaching the infant separated in the position as set forth in claim 1.

4. Claim 1-8, 10, and 13-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Yen (2002/0158094-6520391) or Fair (5813580). Yen teaches a harness having apertures 13, a near shoulder strap 22, and a far shoulder strap 21 and the infant being support on the hip as shown in Fig. 5. Fair teaches a

5. Claims 1-8, 10, and 13-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Fair (5813580) or in the alternative, over Fair in view of Sattler (5269449). Fair teaches a harness having apertures 46, and two shoulder straps 22 that can be adjusted for hip carrying position as shown in fig. 6. With respect to the positions of the strap and the infant, it is noted these are various positions capable of performed by the apparatus in Fair, i.e., on of the strap can be position on the other shoulder. Furthermore, it is noted that the invention recites only an infant carrier. The infant carrier in Fair meets the structure of the claimed invention, namely the infant carrier. The various ways of using the two shoulder straps does not impart any structure over the carrier in Fair. To the degree it is argued otherwise, Sattler teaches that it is known in

the art to provide the two shoulder straps positioned in two different shoulders. It would have been obvious to one of ordinary skill in the art to position the two straps in Fair in two different shoulders to provide the desired means for wearing the harness on the body in the hip position. Furthermore, it is noted that the claims must be distinguished from the prior art in term of structure rather than function. In re Danly, 263 F.2d 844, 847(CCPA 1959). Furthermore, apparatus claims cover what a device is, not what a device does, Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F. 2d 1464, 1469 (CCPA 1935). See MPEP 2114.

6. Claim 1-5, 10, and 13-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaminski (2496216), or in the alternative, over Kaminski in view of Sattler (5269449). Kaminski teaches a infant carrier having a harness having two apertures and a back support for supporting the infant within the harness, a near shoulder strap 7 affixed to and extending from a top perimeter portion of the harness, a far shoulder strap 8. With respect to the positions of the strap and the infant, it is noted these are various positions capable of performed by the apparatus in Kaminski. Furthermore, it is noted that the invention recites only an infant carrier. The infant carrier in Kaminiski meets the structure of the claimed invention, namely the infant carrier. The various ways of using the two shoulder straps does not impart any structure over the carrier in Kaminiski. Furthermore, it is ntoed that Kaminski teaches the strap 8 may be loosened and thron back over the other shoulder (col. 2, ln. 31). To the degree it is argued otherwise, Sattler teaches that it is known in the art to provide the two shoulder straps positioned in two different shoulders. It would have been obvious to one of ordinary skill in the art to position the two straps in Kaminski in two different shoulders to provide the desired means for wearing the harness on the body. Furthermore, it is noted that the claims must be distinguished from the prior art in term

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of structure rather than function. In re Danly, 263 F.2d 844, 847(CCPA 1959). Furthermore, apparatus claims cover what a device is, not what a device does, Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F. 2d 1464, 1469 (CCPA 1935). See MPEP 2114.

Regarding claim 2, not the strap 8 being adjustable.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaminiski (249216) in view of Kimbrough or Halligan. It would have been obvious to one of ordinary skill in the art to provide widen area as taught by Kimbrough (portion 17) or Halligan to provide added comfort.

8. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaminski in view of Dimas, Jr. et al. (4324430). It would have been obvious to one of ordinary skill in the art to provide the means for attaching to a shopping cart as taught by Dimas, Jr. (Fig. 6) To keep the infant secured in a shopping cart.

9. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Yen or Fair in view of Bicheler et al. (5178309). It would have been obvious to one of ordinary skill in the art to provide the means for attaching to a shopping cart as taught by Bicheler (Fig. 9) to keep the infant secured in a shopping cart.

10. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai
Primary Examiner
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